

2010 POA NEGOTIATIONS
CITY'S LIST OF NEGOTIATION PROPOSALS, INTERESTS & ISSUES

Pursuant to MOA Article 1, the City wishes to raise the following issues to the extent that they are mandatory subjects of bargaining:

PERIOD OF MEMORANDUM OF AGREEMENT – ARTICLE 1

1. Term of contract

WAGES – ARTICLE 5.1

2. Wages

HEALTH INSURANCE – ARTICLE 8

3. Cost sharing formula
4. Co-pays for HMO plans
5. Payment-in-lieu of Health and/or Dental Insurance Program
6. Elimination of dual coverage

PAYCHECKS – ARTICLE 11

7. Language changes

HOURS OF WORK AND OVERTIME - ARTICLE 13

8. Calculation and eligibility for overtime

COMMUNITY POLICING - ASSIGNMENTS – ARTICLE 17 AND ARTICLE 52

9. Term of shift change

POLICE VEHICLE – ARTICLE 21

10. Vehicle replacement changes

GRIEVANCE PROCEDURE – SECTIONS 25.6, 25.7 AND 25.8

11. Immediate Arbitration
12. Consolidated Arbitration
13. Disciplinary Grievances

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SICK LEAVE – ARTICLE 31

- 14. Sick leave payout for current employees
- 15. Sick leave payout for new hires

PROMOTIONAL MOA – ARTICLE 40

- 16. Promotional MOA language changes

RETIREMENT - ARTICLE 49

- 17. Pension formula for new hires
- 18. Final Average Salary for new hires
- 19. Cost of Living Adjustment (COLA) for new hires
- 20. Workers' Compensation Offset
- 21. Pension prior service costs/unfunded liability
- 22. Supplemental Retiree Benefit Reserve (SRBR)

RETIREE HEALTHCARE

- 23. Retiree healthcare benefits for new hires

SALARY STEP STRUCTURE

- 24. Revise step structure and movement within steps
- 25. Freezing step structure

CIVILIANIZATION

- 26. Civilianization of functions

CITY-PAID UNION RELEASE TIME

- 27. City-paid union release time

EXECUTIVE LEAVE IN LIEU OF OVERTIME FOR CAPTAINS

- 28. Executive leave in lieu of overtime for Captains

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RATE OF PAY FOR SEPARATION PAYOUTS

29. Rate of pay for separation payouts

ELIGIBILITY FOR PREMIUM PAYS DURING PAID LEAVE

30. Eligibility for premium pays during paid leave

EDUCATION INCENTIVE AND REIMBURSEMENT

31. POST Pay

HOUSEKEEPING

32. Housekeeping

CITY PROPOSAL #3 – COST SHARING FORMULA

8.1 Health Insurance Coverage

8.1.1 Eligible employees may elect health insurance coverage under one of the available plans for employee only or employee and dependents.

8.1.2 ~~The City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$150.00 per month. Any additional amount above the cost of the lowest priced plan, less \$150.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.~~

~~8.1.38.1.2~~ Effective the first pay period of payroll calendar year 2009, the The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

8.1.3 Effective June 27, 2010, the City will pay eighty percent (80%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay twenty percent (20%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

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CITY PROPOSAL #4 – HEALTHCARE HMO PLAN DESIGN

8.1.4 ~~Effective January 1, 2009, co-pays~~Co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay: \$10
- b. Prescription Co-pay: \$5 for generic and \$10 for brand name (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)
- c. Emergency Room Co-Pay: \$50

Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$25.
- b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name.
- c. Emergency Room Co-pay shall be increased to \$100.
- d. Inpatient/Outpatient procedure copay shall be increased to \$100

CITY PROPOSAL #5 – HEALTH AND/OR DENTAL IN LIEU

8.3 Payment-in-Lieu of Health and/or Dental Insurance Program

8.3.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

8.3.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive ~~fifty (50%) percent of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty (50%) percent of that contribution.~~ the following per payperiod.

	Health in-lieu	Dental in-lieu
If eligible for family coverage	\$150	\$10
If NOT eligible for family coverage	\$50	\$10

8.3.3 An employee who is already receiving other City provided medical benefits is not eligible for payment-in-lieu.

8.3.43 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

8.3.54 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period or within thirty (30) days of a qualifying event (as defined in the Human Resources Benefit Handbook) occurring anytime during the year. Employees who fail to enroll in the payment-in-lieu program during the thirty (30)-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. The employee may cancel enrollment in the payment-in-lieu of insurance program only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

8.3.56 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include, but not be limited to, the following situations: employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

8.3.76 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

8.3.76.1 **HEALTH INSURANCE:** To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carrier's enrollment procedures.

8.3.76.2 **DENTAL INSURANCE:** Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

CITY PROPOSAL #6 - HEALTHCARE DUAL COVERAGE

8.1 Health Insurance Coverage

8.1.5 An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee.

8.2 Dental Plan

8.2.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee.

CITY PROPOSAL #7 – PAYCHECKS

ARTICLE 11 PAYCHECKS

~~11.1 City Finance Department shall make paychecks available by 1030 hours on the day of distribution; provided, however, there will be no penalty in the event that some unforeseen problem delays distribution. In such event, the Finance Department will make every reasonable effort to make paychecks available as soon after 1030 hours as possible.~~

~~11.2 Employees may at their option, file with the Finance Department appropriate written instructions for the automatic deposit of their pay checks which instructions may be amended at such times as the Finance Department determines are reasonable.~~

11.3 Overpayment Payback

Any appropriate payback process from any employee to the City shall be in the same amount and at the same rate in which the overpayment occurred. This provision does not create a right of appeal where one did not exist before.

CITY PROPOSAL #8 – OVERTIME ELIGIBILITY

Proposed Language

ARTICLE 13 HOURS OF WORK AND OVERTIME

- 13.1 The work period shall be fourteen (14) days and shall coincide with the pay period commencing at 12:01 A.M. Sunday and ending at 12:00 Midnight Saturday of the following week.
- 13.2 The workday, for pay purposes, shall be a twenty-four (24)-hour period commencing with the beginning of the employee's regularly scheduled shift.
- 13.3 Except for employees assigned to four days of ten-hour shifts, and employees assigned to five/eight-hour shifts other than Monday through Friday, the normal work schedule shall be forty (40) hours per week, consisting of five (5) consecutive days of eight (8) hours each, Monday through Friday. Shifts other than the ten-hour shift shall be exclusive of a lunch period.
- 13.4 Employees assigned to a five/eight-hour shift schedule shall be given two (2) consecutive days off and employees assigned to a four/ten-hour shift shall be given three (3) consecutive days off even though such days off are in different work weeks except where due to a change in the employee's work schedule, it is impossible to provide two or three consecutive days off, whichever is applicable.
- 13.5 The present four/ten workweek shall continue during the term of this Agreement unless mutually changed by the parties.
- 13.5.1 However, the Department, in its discretion, may change the following units to a five/eight workweek:
- | | | | |
|----|-------------------------|----|-------------------|
| A. | BFO Administrative Unit | F. | Reserves |
| B. | School Safety | G. | Training |
| C. | Crime Prevention | H. | Video |
| D. | Traffic Investigation | I. | Explosive Control |
| E. | P.A.L. | J. | Captains |
- 13.5.2 In addition, modified duty non-uniformed assignments may be changed to a five/eight-hour schedule, unless they are assigned to one of the units listed in Section 13.5.1, whereupon their shift may be changed with the rest of that unit.
- 13.5.3 Alternate Work Week
- As an alternative to the normal five-day/eight-hour work schedule for employees outside of the Bureau of Field Operations, in accordance with Article 13.4 and subject to the concurrence and approval of the Chief or the

Assistant Chief, a regular full-time employee may elect to work an alternate work schedule. The following conditions and restrictions shall apply to all employees electing an alternate schedule.

- 13.5.3.1 An employee may elect to establish a biweekly work schedule which varies from the normal schedule in the number of hours worked per day and in the number of days worked per week, except that no single workday may exceed ten (10) hours, and total scheduled hours may not exceed eighty (80) hours in any biweekly pay period. Alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly pay period.
 - 13.5.3.2 No alternate work schedule may be established in which overtime is incurred either under this Agreement or under federal or state law. Alternate work schedules may be canceled if overtime or sick leave balances adversely affect the service level, operation, or budget of a unit.
 - 13.5.3.3 The alternate schedule is designed to accommodate the needs of the employee and the work unit. Once elected and approved, it is intended to continue for an indefinite period. However, should the needs of the employee or work unit dictate, the alternate schedule may be terminated with reasonable notice.
 - 13.5.3.4 If one or more employees' request to establish an alternate workweek is denied, or if an alternate schedule is canceled, Association shall have the right to meet with the Assistant Chief to appeal the decision. The decision of the Assistant Chief shall be final.
 - 13.5.3.5 Any alternate work schedule shall terminate upon the date of the transfer, promotion, or demotion of the employee.
 - 13.5.3.6 Neither the failure of the Department to enter into an alternate work agreement, nor the termination by the Department of any such agreement shall be subject to the Grievance Procedure in Article 25; provided, however, that if alternate work agreements have been terminated on a Bureau-wide basis, such action shall be subject to the grievance procedure.
 - 13.5.3.7 Consecutive days off may be waived by mutual agreement.
 - 13.5.3.8 Should the employee have a scheduled court appearance or any other scheduled requirement to work on his/her scheduled day off, the employee will adjust his/her workweek to include the days as part of his/her workweek.
- 13.6 An employee authorized or required to work overtime who works in excess of eight (8) hours per day, or ten (10) hours per day if assigned to a work schedule of four/ten-hour work days, or in excess of forty (40) hours per workweek, shall be compensated at the rate of time and one-half the employee's base hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill his/her workweek requirement. Except as

otherwise required by Article 14, no overtime compensation shall be paid for overtime worked which does not exceed thirty (30) minutes per day. Overtime worked which exceeds thirty (30) minutes in any work day shall be compensated to the nearest half-hour.

13.6.1 An employee assigned to work overtime may elect to be paid in cash for such overtime up to a maximum of three (3) hours per pay period or be credited with compensatory time, as determined by the employee except as provided in provision 13.6.1.1 below. Any overtime payment beyond three (3) hours per pay period or as provided for in provision 13.6.1.1 below, shall be made at the City's discretion. Effective June 28, 2009, an employee assigned to work overtime may elect to be paid in cash for such overtime up to a maximum of six (6) hours per pay period or be credited with compensatory time, as determined by the employee except as provided in provision 13.6.1.1 below. Any overtime payment beyond six (6) hours per pay period or as provided for in provision 13.6.1.1 below, shall be made at the City's discretion. Payment for overtime worked, authorized pursuant to this paragraph, shall be made as soon after the pay period in which the overtime is worked as practical, but in no event longer than two pay periods after the pay period in which the overtime is worked.

13.6.1.1 Employees assigned to "pay cars" and/or assigned to work on overtime in the programs noted herein shall be paid in cash for such overtime worked. The City reserves the right to modify the listed functions as necessary.

- Entertainment Zone
- Downtown Services Detail
- Truancy Abatement and Burglary Suppression Program
- Project Crackdown
- Hazardous Escorts
- Programs with Specific Funding Sources (i.e. grant-funded or fee-supported programs)

13.6.2 Notwithstanding any past practice or contract (Agreement) provision or language to the contrary, only actual hours worked shall be used to calculate eligibility for overtime compensation pursuant to this Article.

13.6.32 The outstanding amount of accrued compensatory time owed to an employee shall not exceed 240 hours by the end of each calendar year. An employee may exceed the 240 limit during the year but shall be responsible for bringing the balance back to the 240 hour maximum level by taking the time off prior to the end of the calendar year. This time off must be pre-approved by the supervisor.

13.6.32.1 In the event the outstanding amount of accrued compensatory time owed to an employee exceeds 480 hours, the employee will automatically receive payment for any hours in excess of 480 hours.

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13.6.43 Once compensatory time off has been approved and scheduled, the employee shall be permitted to take such time off, unless emergency circumstances necessitate cancellation of such scheduled time off. In such event, the employee will remain credited with the compensatory time canceled.

13.6.54 Except as provided in Section 13.6.65 below, overtime worked by the employee for compensatory time shall remain compensatory time to be taken, subject to provision 13.6.32 and 13.6.43 above, so long as the employee continues his/her employment in a classification represented by the Organization. Any employee whose employment is terminated by reason of resignation, discharge, or retirement, and who, at the time thereof has accrued unused compensatory time, shall be paid for such time at the appropriate rate. In the event of the death of an employee who has accrued unused compensatory time, the appropriate payment shall be made to the executor of the will, the administrator of the estate or other representative, as authorized by law.

13.6.65 Notwithstanding the provisions of section 13.6.54 above, the City shall have authority to require employees to immediately take time off to reduce the outstanding amount of accrued compensatory time off above the 240 hour maximum level, with the following exceptions:

13.6.65.1 If an employee is unable to reduce his/her comp-time balance to 240 hours by the end of the last pay period of the calendar year, by December 1 of that year, an employee shall submit a written plan to his/her immediate supervisor outlining how the excess hours will be reduced. If the employee submits a plan by that date, the employee shall receive a ninety (90) day carryover (to March 31 of the next calendar year) of any accrued compensatory time hours above the 240 hour maximum level. The plan shall include the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance by March 31.

13.6.65.2 If an employee's compensatory time balance is above the 240 maximum level at the end of the last pay period of the calendar year and the employee complied with the provision of subsection 13.6.5.1 above but earned additional compensatory time hours above those previously identified for a ninety (90) day carryover or the employee did not submit a carryover plan because his/her compensatory time balance was at or below the 240 maximum level at the time the carryover plan was due for submittal; the employee shall submit either an amended or new plan to his/her immediate supervisor by the end of the first pay period of the new calendar year outlining how the excess hours will be reduced. If the employee submits the amended or new plan within the specified timeline, the employee shall receive a ninety (90) day carryover (to March 31 of the new calendar year) of any accrued compensatory time hours above the 240 hour maximum level. The plan shall include the reason(s) for the carryover need and

plan of action to bring the compensatory time balance back into compliance within the ninety (90) day time frame.

13.6.65.3 If emergency circumstances necessitate that an additional sixty (60) days (beyond the limits set forth in provision 13.6.65.1) is needed for an employee to bring his/her compensatory time balance into compliance with provision 13.6.2, the employee shall submit a written request to the Chief of Police, again outlining the reason(s) for the carryover need and plan of action to bring the compensatory time balance back into compliance. The approval of this request shall be at the discretion of the Chief of Police.

13.6.65.4 No employee shall be required to reduce his/her individual number of accrued hours of compensatory time below 240 hours without the approval of the individual employee.

13.6.6 Supervisory approval or disapproval of compensatory time off shall be based on scheduling and staffing needs and not on an individual's reason for seeking to use the compensatory time.

13.6.7 The City reserves the right to buy down any employee's outstanding balance of compensatory time, subject to the provision of subsection 13.6.65.3. Such buy down shall be uniform, by percentage, as to all employees within a bureau.

~~13.6.8~~ Disability Leave and Overtime

~~An employee who has taken approved time off during his/her regularly scheduled shift for medical appointments, treatment or therapy for an industrial or non-industrial injury or illness shall not be entitled to count said hours taken for such appointment, treatment or therapy as hours worked for the purposes of entitlement to overtime unless said employee is required by the Chief, or his/her designee, to work unscheduled, unplanned hours of an emergency nature (similar to a departmental holdover) or when the department issues a specific order to an employee on the day of his/her scheduled appointment, treatment, or therapy.~~

30.3 Computation of Vacation Leave

30.3.1 For purposes of this ~~Article~~vacation accrual, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time-off, or any other paid leave, shall be deemed to be "time worked."

30.3.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period, the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation even though such employee may, upon satisfactory completion of the initial probationary period be entitled to additional vacation pursuant to the above.

- 31.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616, up to a maximum of ninety-six (96) hours per year. Only paid leave for sick leave, holidays, vacation, disability, compensatory time off, or other paid leave shall be considered as time worked for purposes of sick leave accrual~~this section~~.

CITY PROPOSAL #9 – SHIFT CHANGES

Proposed Language

ARTICLE 17 ASSIGNMENTS

- 17.1 It is recognized and agreed that the primary obligation of the Department is to provide service of the highest quality to the public. The right to assign personnel is inherent to providing such quality service.

Management also recognizes the desire of employees to periodically request changes in work assignments. In March and September of each year, requests for shift and beat assignments based on seniority shall be accepted from the employees in the representation unit, subject to the rights of the Assistant Chief of Police or in his/her absence his/her specifically designated representative to deny such request if, in his/her opinion, the obligation of the Department to provide the public with police service of the highest quality would not be fulfilled.

- 17.1.1 Any employee otherwise eligible to request a shift and beat assignment as specified in paragraph 17.1 above whose request for such assignment is denied, shall be entitled upon request to an explanation of the denial from the Assistant Chief of Police or the Assistant Chief's specifically designated representative. Such request shall be made to the Assistant Chief or his/her specifically designated representative within five working days following the denial.
- 17.1.2 In the event the matter is not resolved by the Assistant Chief or his/her specifically designated representative, the employee may within five (5) working days of the receipt of the Assistant Chief's decision appeal to the Employee Relations Director by submitting a written request for review. Within ten (10) working days following the receipt of the written request for review, the Employee Relations Director or designee shall hold a meeting with the employee and/or the appropriate employee Organization representative. A written decision shall be given to the employee and/or the appropriate employee representative within five (5) working days following such meeting.
- 17.1.3 In the event that the matter is not resolved as a result of the meeting referenced in 17.1.2 above, the employee may request a review by the City Manager or his/her designated representative. Such request shall be in writing and shall include the reason or reasons why the employee is not satisfied with the decisions previously rendered. Within ten (10) working days of the receipt of such written request for review, the City Manager or his/her designated representative shall notify the employee of the results of such review. The decision of the City Manager or his/her designated representative shall be final and binding.

ARTICLE 52 COMMUNITY POLICING

- 52.1 The POA hereby reiterates its support for the concept and implementation of community policing, and endorses the same. The POA and the City agree to combining efforts to ensure the success of Community Policing.
- 52.2 The mutual efforts of the parties include, but are not limited to, joint presentations by the Chief (or his/her designee) and the POA President (or his/her designee) to support Community Policing before members of the Police Department, community groups, media or other forums or groups determined by the parties.
- ~~52.3 Each party shall also support and encourage community policing on its own. To this end, each six months prior to sign up for shift changes, the POA agrees to send a notice and discuss at union meetings the fact that it urges its members to remain in assignments for at least two six-month rotations to further Community Policing efforts.~~
- ~~52.4 The parties hereby jointly establish a goal of increasing the number of employees by twenty (20%) percent who voluntarily remain in the same assignment and shift for at least twelve (12) months, within the next two rotations.~~
- ~~52.5 A Labor Management Committee shall be established to identify and discuss ways to increase the length of time employees remain on a shift and in a given assignment. Further the Labor Management Committee shall discuss and evaluate acceptable methods for reducing staff turnover in assignments which impact Community Policing, including such concepts as "shift within shift" (i.e., changes by exception during longer assignments), ways to address the personal disadvantages of longer assignments and other matters related to the length of shift rotations.~~
- 52.6 At its own expense, the POA shall provide printed material such as public education brochures on Community Policing for distribution to the residents and businesses in San Jose. Such printed materials shall be found acceptable by the Police Chief before distribution.

CITY PROPOSAL #10 – POLICE VEHICLES

Proposed Language

ARTICLE 21 POLICE VEHICLE

21.1 Vehicle Replacement

21.1.1 In determining when to replace police vehicles, including those commonly referred to as "detective cars," the Department shall evaluate the following factors:

- a) Mileage on the vehicle;
- b) Age of the vehicle;
- c) Assessment by City mechanics as to the useful life remaining for such vehicle;
- d) Any concerns or comments voiced by officers operating such vehicles; and
- e) Practices in other law enforcement agencies regarding replacement of similar vehicles.

21.1.2 The City agrees that in the replacement of vehicles usually referenced as detective cars, such replacement vehicles shall include air conditioning.

~~21.2 Police Vehicle Specifications~~

~~In the acquisition of new police patrol vehicles, the specifications currently used by the City of Los Angeles or California Highway Patrol shall be followed by the City insofar as is reasonably possible so as to provide vehicles reasonably safe and suitable for patrol purposes.~~

~~21.3 Police Vehicle Parts~~

~~The City shall follow insofar as is reasonably possible the policy of the City of Los Angeles or the California Highway Patrol pertaining to replacement parts or the equivalent thereof.~~

~~21.4 Police Vehicle Testing~~

~~All police patrol vehicles that have been damaged shall be inspected and tested prior to return to duty status and a record shall be maintained setting forth the approval for the return to duty and the persons testing the vehicle.~~

CITY PROPOSAL #11 – IMMEDIATE ARBITRATION

25.6 – Immediate Arbitration

- 25.6.1 — ~~Any party may waive the grievance procedure time limits specified in this Article and proceed to immediate arbitration in any case where the party alleges that the other is threatening to take an action in violation of the Agreement in so short a period of time as to disallow the party from proceeding within the time limits of this Article. However, the method of proceeding to Immediate Arbitration must be done consistent with the following provisions.~~
- 25.6.2 — ~~The arbitration shall take place no earlier than the fifteenth day following the request by the grieving party for such "Immediate Arbitration," unless otherwise mutually agreed. During the two week period (14 calendar days) immediately following the request for Immediate Arbitration, the responding party shall have the opportunity to attempt to resolve the dispute.~~
- 25.6.3 — ~~If the City is the responding party, the Chief of Police and the Director of Employee Relations or their designated representatives, jointly, shall have the opportunity to meet with or otherwise communicate with appropriate Organization Representatives, in an attempt to resolve the dispute.~~
- 25.6.4 — ~~Once the request for Immediate Arbitration is filed, the parties shall (even though dispute resolution discussions are going on during the two week period) attempt to agree upon a neutral arbitrator and to obtain a date for arbitration hearing as soon as possible immediately following the two week period.~~
- 25.6.5 — ~~The parties will attempt to have a standing list of available "Immediate Arbitrators," but if no agreement on same is reached, the parties will obtain five arbitrators, by telephone if possible, from the State Mediation and Conciliation Service. The first arbitrator available to hear the matter following the two-week period shall be selected as arbitrator. The order of contacting the potential arbitrators shall be determined by lot unless mutually agreed otherwise. The parties are free to mutually agree upon an immediate arbitrator through any other process or agreement.~~
- 25.6.6 — ~~In any such case, the arbitrator selected to decide the dispute or grievance shall have the full and equitable power to frame a decision, including an order to the party initiating the dispute or grievance to abide by the time limits provided in the Article, or a restraining order against the party threatening the action or any other form of arbitration order that would resolve the matter in an equitable and just manner.~~
~~However, the arbitrator may not add to, subtract from, change or modify any provision of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.~~

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- ~~25.6.7 Unless the parties agree otherwise, closing argument shall be presented orally and there shall be a "bench" decision.~~
- ~~25.6.8 The parties shall attempt to have the arbitration proceedings completed as quickly as possible, including by meeting nights and weekends, if at all possible.~~

CITY PROPOSAL #12 – CONSOLIDATED ARBITRATION

19.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer or negotiate on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer or negotiate on the subject matter covered herein. This provision shall not apply to matters covered by the provisions entitled "Consolidated Arbitration," in the Grievance Procedure herein.

25.7 Consolidated Arbitration

25.7.1 ~~If a matter goes to arbitration, and an arbitrator determines that the dispute in question is not otherwise covered by this Agreement, but would be subject to the provisions of Section 1111 of the Charter of the City of San Jose, then the same arbitrator serving as the neutral arbitrator and chairperson shall convene a three member Board of Arbitrators and shall have the same authority as if selected as the neutral arbitrator under Charter Section 1111. The non-neutral members of the Board shall be chosen as provided in Section 1111. The Board shall conduct "mediation/arbitration." The Parties contemplate the sort of "mediation/arbitration" as the process is traditionally used in the San Francisco Bay Area. This process shall constitute issue by issue, last best offer arbitration proceedings as described in Charter Section 1111.~~

25.7.2 ~~The parties herein contemplate eliminating the additional time and expense that would occur if a separate arbitrator had to be chosen under Section 1111 to hear/resolve the dispute in a separate proceeding.~~

CITY PROPOSAL #13 – DISCIPLINARY GRIEVANCES

25.8 Disciplinary Grievances

- 25.8.1 Employees in the bargaining unit shall only be disciplined for cause. Discipline is defined to include those matters that are cognizable before the Civil Service Commission plus disciplinary transfers.
- 25.8.2 Persons on probationary status (entry-level or promotional) may not appeal under this agreement rejection on probation.
- 25.8.3 Letters of reprimand may be appealed under this section only to the City Manager level.
- 25.8.4 Documented Oral Counselings (DOCs) retained by the Internal Affairs Division may be appealed under this section only to the level of Assistant Chief of Police. However, should a particular DOC be the result of the Assistant Chief's having reduced a higher form of discipline to a DOC with which the affected officer is still dissatisfied, such DOC may be appealed to the level of the Chief of Police. DOCs received for preventable, automobile accidents shall not be appealable unless the officer contends that the accident was not preventable.
- 25.8.5 Nothing herein constitutes a waiver of rights of employees otherwise granted by law (e.g., Government Code Sections 3300 et. seq.).
- 25.8.6 An employee challenging a suspension, demotion, dismissal or disciplinary transfer shall have the option of ~~choosing between the dispute-resolution provisions of this Agreement, or appealing to the Civil Service Commission.~~ Any employee who wishes to preserve the right of appeal to the Commission must comply with the time requirements for filing such appeal as specified in the Civil Service Rules. Within twenty (20) days of the date of a Notice of Discipline, the employee may file an appeal with the Civil Service Commission. ~~or pursue the grievance procedure or both. The grievance procedure shall begin at Step IV Arbitration for this process. Immediate arbitration shall not apply.~~ No provision under Section 25.8.6 shall be subject to the grievance procedures of this Agreement. The appeal process for suspensions, demotions or dismissals are not subject to appeal through the grievance procedures of this Agreement.
- 25.8.7 ~~The employee shall confirm his/her election of remedies in writing to the Director of Employee Relations. If the employee files an appeal to the Civil Service Commission and also an appeal through the grievance procedure of this Agreement within the required timelines, the election of remedies must be made no later than 45 days from the date of the Notice of Discipline. The election of remedies must also be made prior to the submission of a request for a list of arbitrators and prior to scheduling a Civil Service Commission appeal hearing. As otherwise provided in this Agreement, for the matter to go to binding arbitration, the Organization must agree (i.e., must be the party taking the matter to arbitration.~~

25.9 General Provisions of Grievance Procedure

~~25.9.11 Nothing in the agreement between the City and the Organization shall be construed so as to prevent the Organization from working out any arrangement it chooses for the reimbursement or other payment by members of its bargaining unit for the costs of any arbitration proceeding involving a disciplinary grievance. The City shall have no responsibility for collecting such amounts.~~

CITY PROPOSAL #14 – SICK LEAVE PAYOUT FOR CURRENT EMPLOYEES

31.1 Sick Leave Payout

Sick leave payout shall be given to full-time benefited employees who are members of the Federated City Retirement System and the Police and Fire Retirement Plan at the time of retirement or death under one of the following conditions:

31.2.1 Police and Fire Retirement Plan

The employee is a member of the Police and Fire Retirement System and retired under the provisions cited in the plan and credited with at least twenty (20) years of service in this retirement plan or ~~credited with any service prior to a service-connected disability retirement.~~

31.2.2 Federated City Retirement System

The employee is a member of the Federated City Retirement System and retired under the provisions cited in the plan and credited with at least fifteen (2015) twenty years of service in this retirement plan or ~~credited with at least ten (10) years of service prior to a service-connected disability retirement.~~

~~31.2.3~~ Terminated Employee with Vesting Rights

~~The employee has terminated service with the City in good standing, retained vesting rights in a retirement system according to the provisions of the San Jose Municipal Code and following such termination qualifies for retirement and retires under the provisions cited in the code and has at the time of retirement credit for at least;~~

- ~~•20 years of service in the Police and Fire Retirement System~~
- ~~•15 years of service in the Federated City Retirement System~~

~~31.2.4~~ Death During Service

~~The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least;~~

- ~~•20 years of service in the Police and Fire Retirement System~~
- ~~•15 years of service in the Federated City Retirement System~~

~~31.2.5~~ 31.2.3 Payout shall be determined as follows:

~~31.2.5.1~~ 31.2.3.1 If a full-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specified percent of his/her hourly

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rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death.

Less than 400 hours: _____ Hours accumulated x 50%
_____ of final hourly rate

or, 400 – 799 hours: _____ Hours accumulated x 60%
_____ of final hourly rate

or, 800 – 1200 hours: _____ Hours accumulated x 75%
_____ of final hourly rate.

Hours	Payout
Less than 400 hours	Hours accumulated x 50% of final hourly rate
400 - 1200 hours	Hours accumulated x 60% of final hourly rate
There shall be no payout for any hours over 1200	

31.2.5.2 ~~If a full-time employee at the time of his/her service retirement has between 800 and 1,200 hours of unused sick leave, at the employee's request he/she shall be paid hours accumulated X 80% of final hourly rate.~~

31.2.5.3 ~~If a full-time employee at the time of his/her service retirement or upon the employee's death has 1,200 hours or greater of earned unused sick leave, he/she, or his/her estate, shall be paid a sum of money equal to 100% percent of his/her hourly rate at the time of his/her death or service retirement, whichever is earlier, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her death or retirement. If, after retirement, the employee switches from service to disability retirement, the employee shall repay to the City the difference in sick leave payout between service and disability retirement (e.g. 100% service, 75% disability).~~

31.2.5.3.1 ~~An employee who, at the time of his/her retirement, qualifies for benefits in the 800 to 1,200 hour category as provided in subsections 31.2.4.1 and 31.2.4.2 above, shall be credited, for insurance purposes only, with a value equal to twenty-five (25%) percent of his/her hourly rate of pay for those individuals in the seventy-five (75%) percent payment category or a value equal to twenty (20%) percent of his/her hourly rate of pay for those individuals in the eighty (80%) percent payment category at the time of his/her retirement or termination, whichever is earlier, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement, or by 1,200~~

~~hours, whichever is less. The City shall pay the cost of health and/or dental insurance premium, for the type of coverage specified by the employee, for the employee or for the employee and his/her dependents under one of the health and/or dental insurance plans available at the time to regular full-time City employees, until such time as the total amount of such payments equals the total amount credited to such employee hereunder, or until the death of such employee, whichever is earlier.~~

~~31.2.6~~ Payment for Accrued Sick Time

~~Upon retirement (Service or Service Connected Disability) an officer shall receive a lump sum cash payment for the total amount of accrued sick time hours.~~

~~31.2.7~~ Death of Terminated Employee

~~The estate of any full-time employee who had terminated service with the City in good standing but had retained vesting rights in a retirement system according to the provisions in the San Jose Municipal Code and dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San Jose Municipal Code and has at the time of death credit for at least;~~

- ~~• 20 years of service in the Police and Fire Retirement System~~
- ~~• 15 years of service in the Federated City Retirement System~~

31.2.8 For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of his/her retirement or death, unused sick leave from prior periods of employment with the City shall be used. Such previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

31.2.9 Employees are only eligible for one sick leave payoff while employed by the City of San Jose, including breaks in employment.

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CITY PROPOSAL #15 – SICK LEAVE PAYOUT FOR NEW HIRES

Proposed Language

31.2.8 Employees hired by the City on or after July 1, 2010, shall not be eligible for a sick leave payoff benefit.

CITY PROPOSAL #16 – PROMOTIONAL MOA

Proposed Language

See Attached

Promotional Memorandum of Agreement

City of San José

and

San José Police Officers' Association



July 1, 2008 – June 30, 2010 [DATE] – [DATE]

**PROMOTIONAL MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
&
THE SAN JOSE POLICE OFFICERS' ASSOCIATION**

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The Memorandum of Agreement for Promotions hereinafter referred to as the "Agreement" is established by agreement at San José, California, this 24th day of January, 2009[Date] by and between the City of San José, California, hereinafter referred to as the "City" and the San José Police Officers' Association, hereinafter referred to as the Employee Association or "Association." This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any or all prior or existing Memorandum of Understanding, understandings and agreements, whether formal or informal, including grievance settlements and arbitration decisions interpreting those understandings, are hereby superseded and terminated in their entirety. The use of the term "Memorandum of Agreement" or "Agreement" is to be considered the same as the term Memorandum of Understanding contained in Section 3505.1 of the "Meyers-Milias-Brown-Act."

ARTICLE 1 TERM

This Promotions Memorandum of Agreement shall become effective July 1, 2008[Date], except where otherwise provided, and shall remain in effect through June 30, 2010[Date]. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

ARTICLE 2 NON-DISCRIMINATION

The Parties agree that they and each of them shall not discriminate with respect to promotions against any employee or organization member in accordance with the City of San Jose Discrimination and Harassment policy, Section 1.1.1 of the City Policy Manual and/or any applicable State or Federal laws.

ARTICLE 3 ELIGIBILITY

- 3.1 To qualify for an examination for Police Sergeant, an individual must have at least three (3) years experience as a Police Officer for the City of San Jose.
- 3.2 To qualify for an examination for Police Lieutenant, an individual must have at least two (2) years experience as a Police Sergeant for the City of San Jose.
- 3.3 To qualify for an examination for Police Captain, an individual must have at least two (2) years experience as a Police Lieutenant for the City of San Jose.
- 3.4 To qualify for an examination for Deputy Chief of Police, an individual must currently hold the position of Police Captain and have at least two (2) years experience as a Police Lieutenant for the City of San Jose.

ARTICLE 4 EXAMINATION NOTIFICATIONS

- 4.1 Public notice of upcoming test shall be posted no later than sixty (60) days before test date.
- 4.2 There shall be no extension of the applicant filing date or test date unless announced to all potential candidates.

- 4.3 The City shall provide, no less than one time every calendar year, a promotional counseling session available to all Police Officers seeking advice on how best to prepare for their specific promotional testing process. Officers may participate on their own time.

ARTICLE 5 EXAMINATIONS

- 5.1 Booklets containing test questions shall be officially numbered in sequence with test answer sheets containing the same number. Candidates taking an exam shall be given a test booklet and answer sheet identified with identical numbers.
- 5.2 All questions used in all written examinations shall have their source listed in parenthesis under questions on exams.
- 5.3 With respect to Sergeant and Lieutenant examinations, questions on the written examination will be based upon the content of the departmental reading list if a written examination is given as part of that promotion process.
- 5.4 The weights of the Sergeant examination will be 50% written and 50% oral. The oral examination will include a writing exercise component, which will account for 5% of the candidate's total score.
- 5.5 The City may use more than one oral board for an examination.
- 5.6 The use of audio-taping or videotaping may be implemented in the "Oral" portion of an examination. If any candidate is recorded, all candidates shall be similarly recorded; that is, there shall be uniformity in the process. In addition, there shall be four (4) week written notice to all candidates of such recordation. Notice of taping/recordation in the exam announcement shall suffice.
- 5.7 The Sergeant and Lieutenant oral boards should be representative of the existing the diversity of the workforce. If the oral board elected through the participants' voting process fails to do so, the Chief may elect to appoint an extra member of each board. In that event, the Sergeant boards will have a maximum of five (5) raters and the Lieutenant boards will have a maximum of four (4) raters.
- 5.8 The Sergeant and Lieutenant oral board will include a representative from the Office of Employee Relations or the Human Resources Department as an observer.
- 5.9 For oral board rater selection for promotional examinations for Sergeants and Lieutenants, the examinees shall elect two raters from Lieutenants and/or Captains in the San Jose Police Department and the Director of Human Resources shall appoint two additional raters whom can be any persons who he/she deems appropriate.
- 5.10 For examinations for Sergeant, Lieutenant and Captain, an observer designated by the Association, who is not an employee of the City of San Jose, may be present during pre-examination training of oral board members, the oral board itself and discussion by oral board raters, if any, to coordinate their scores.

- 5.10.1 The observer shall report to the City and the Police Officers' Association examination process irregularities, if any, which appear to be a violation of the City of San Jose Harassment and Discrimination policy and/or other applicable State and/or Federal laws. To do so, the observer first reports such perceived irregularities to the examination administrator designated by the City by the conclusion of the examination phase in which the alleged irregularity occurs. If that concern continues, the observer shall promptly report the concern to the Office of Employee Relations.
- 5.10.2 If no irregularity is presented by the end of an examination phase, the observer may not raise an issue solely related to that examination phase at any later time, ~~with respect to discrimination.~~ The observer shall not be concerned with or report on the content of an examination. With respect to oral examinations in which there are exercises that are being carried out simultaneously among different examinees, and if the observer cannot watch more than one such exercise without disrupting it, then the observer will watch but one exercise at a time.
- 5.10.3 The observer shall not talk, disrupt, provide clues to any candidate or rater during the examination process, interrupt proceedings in progress or otherwise disrupt the examination process. The observer shall at all times protect the confidentiality of the examination content and candidates' performance except with regard to reports to the parties herein.
- 5.10.4 The observer at the conclusion of the examination process will make a report concerning the examination, and any recommendations the observer may have, jointly to the City and to the Association.
- 5.10.5 The Association will arrange for the presence of its selected observer, including payment, if any is required. The schedule for the examination will not be affected by the ability or inability of the observer to be present.

ARTICLE 6 EXAMINATION PROTESTS

- 6.1 During the protest period of seven (7) calendar days, candidates may view a keyed copy of the test booklet. (Candidates will be allowed an initial key review of two (2) hours by the Wednesday following a Saturday written test. Additional time will be provided as requested within the seven-day period during normal office hours.)
- 6.2 Protest Review Meeting (Optional)
- 6.2.1 The Human Resources Director or designee will discuss protests with all interested candidates. The Human Resources Director or designee will indicate a tentative resolution at the Protest Review Meeting.
- 6.2.2 The Human Resources Director or designee shall prepare a letter to each candidate indicating the Human Resources Director's determination. Candidates have five (5) business days to appeal in writing to the Civil Service Commission.

6.2.3 All appeals must be filed in writing, within five (5) business days of receipt of the letter from Human Resources.

6.2.4 City Clerk will notify appellant of the date, time and place of the meeting. The meeting will be held within ten (10) calendar days of the final day an appeal may be filed.

ARTICLE 7 PROMOTIONAL SELECTIONS

7.1 Promotion lists shall be maintained for two (2) years. At the discretion of the Director of Human Resources the life of a list may be extended for an additional year.

7.2 The Director of Human Resources shall make every reasonable effort with respect to Sergeant and Lieutenant list(s) to provide a new list within 90 days of the exhaustion or expiration of the Sergeant and/or Lieutenant list(s).

7.3 The "Rule of 10" will apply in all promotions, pursuant to San Jose Municipal Code, Section 3.04.780.

7.4 For the purposes of seniority, points added to test scores for placement on all Police promotional eligible lists, seniority points will be based solely on time in the qualifying grade.

7.5 In the event that a person that has been certified as available for appointment on a list is passed over not selected for the second certification off that same list, ~~in that someone listed below that person was appointed instead of the individual,~~ then the person shall, on request, meet with the Chief or designee to discuss the specifics as to why the individual was passed over not selected, and to receive suggestions as to what the individual can do that will enhance his or her chances for future promotion selection.

ARTICLE 8 DISPUTES

Any disputes concerning the interpretation or application of this agreement shall be resolved by the grievance procedures set forth in the Memorandum of Agreement between the City of San José and San José Police Officers' Association.

ARTICLE 9 PROBATIONARY PERIODS

For those persons promoted to the rank of Sergeant or above, the probationary period will be twelve (12) months.

THIS AGREEMENT executed on the ~~24th day of January, 2009~~[Date] between the City of San Jose and the San Jose Police Officers' Association, in WITNESS thereof, the appropriate representative if the parties have affixed their signature thereto.

For the City of San Jose:

**For the San Jose
Police Officers' Association:**

Debra Figone
City Manager

~~Robert Lopez~~George Beattie
President

Alex Gurza
Director of Employee Relations

~~George Beattie~~Jim Unland
Vice President

Aracely Rodriguez
Senior Executive Analyst

Jeff Ricketts
Chief Financial Officer

Franco Vado
Director

John Tennant
General Counsel

CITY PROPOSAL #17 – PENSION FORMULA FOR NEW HIRES

Proposed Language

- 49.4 The current formula for calculating retirement benefits is two and one half (2 ½%) percent of final compensation for each year of service with the City up to twenty (20) years, plus four (4%) percent of final compensation for each year of service with the City between 21 - 30 years subject to a maximum of ninety (90%) percent.

Service from a reciprocal agency may not be combined with the City service in order to earn four (4%) percent per year.

- 49.5 The formula for calculating retirement benefits for Police & Fire Department Retirement Plan members who are in classifications in the San Jose Police Department, who are hired by the City of San Jose on or after July 1, 2010, shall be as follows:

0 – 30 years of service: 2 ½% of final compensation for each year of service with the City

Maximum benefit: 75%

Age/Years of Service (Service Retirement):

55 with 25 years of service

30 years service at any age (with reciprocity, must be 55 years of age)

Early Retirement: No early retirement

CITY PROPOSAL #18 – FINAL AVERAGE SALARY FOR NEW HIRES

Proposed Language

49.7 Final Average Salary. For Police and Fire Department Retirement Plan members who are in classifications in the San Jose Police Department, who are hired by the City of San Jose on or after July 1, 2010, and retire, either for service or disability, the final compensation shall mean the highest average monthly compensation of the member during any period of thirty-six (36) consecutive months of City service for which such member receives credit in the plan.

CITY PROPOSAL #19 – COST OF LIVING ADJUSTMENT (COLA) FOR NEW HIRES

Proposed Language

49.7 Cost of Living Adjustment (COLA).

49.7.1 Police and Fire Department Retirement Plan members who are in a classification in the San Police Department, who are hired by the City of San Jose on or after July 1, 2010, shall be credited by the Retirement Plan, with an annual Cost of Living Adjustment not to exceed 2% to the monthly allowance, after the plan member retires. The COLA will be adjusted every February 1st by the percentage change from December to December in the San Francisco-Oakland-San Jose All Urban Consumers (U) Consumer Price Index from the prior year, but in no event will be increased more than 2.00% per year.

49.7.2 The first year COLA shall be prorated by the number of months between the date of retirement and January 31st of the following year.

CITY PROPOSAL #20 – WORKERS' COMPENSATION OFFSET

Proposed Language

ARTICLE 49 RETIREMENT

- 49.7 In the event a member is retired for a service-connected disability and receives both a service-connected disability retirement allowance and a workers' compensation benefit for temporary disability, permanent disability or vocational rehabilitation temporary disability, the service-connected disability retirement allowance shall be offset by the sum of all workers' compensation benefits as follows:
1. The offset shall apply only to the following persons:
 - a. Those persons whose application for a service-connected disability retirement was filed, by any person authorized to file such application, on or after July 1, 2010; and
 - b. The applicable amount of the workers' compensation benefits shall be converted to a monthly equivalent. The monthly service-connected disability retirement allowance shall be reduced by the workers' compensation benefit monthly equivalent
 2. The applicable amount of the workers' compensation benefits shall be converted to a monthly equivalent. The monthly service-connected disability retirement allowance shall be reduced by the workers' compensation benefit monthly equivalent.
 3. The offset shall be in effect only during such time as concurrent retirement allowances and workers' compensation benefits are paid. In the case of the payment of a lump sum workers' compensation benefit (excluding payments for medical treatment), the offset shall apply only for such period of time as concurrent payments would have been made had the workers' compensation benefit been paid in installments.
 4. In no case shall the offset reduce the service-connected disability retirement allowance to an amount less than the sum of the maximum retired member contributions for medical, dental, life and accidental death insurance premiums, as determined by the City, plus one dollar. This limitation shall apply regardless of whether the retired member actually contributes toward the payment of such premiums.
 5. the offset shall not apply with respect to workers' compensation benefits paid for an injury or illness which did not cause or contribute to the disability for which the service-connected disability retirement was granted.

CITY PROPOSAL #21 – PENSION PRIOR SERVICE COSTS/UNFUNDED LIABILITY

Proposed Language

ARTICLE 49 RETIREMENT

49.7 Effective June 27, 2010, retirement pension contributions required for or because of any prior service or unfunded liability shall be made by the City and Plan members at a ratio of one-to-one.

CITY PROPOSAL #23 – RETIREE HEALTHCARE BENEFITS FOR NEW HIRES

Proposed Language

ARTICLE 51 RETIREE HEALTHCARE BENEFITS

(Current Article 51 and subsequent articles to be re-numbered)

51.1 Retiree Medical Insurance

An employee who is hired on or after July 1, 2010, shall be eligible for a contribution toward the premium for a retiree medical insurance plan provided by the City in the amount of \$400/month or the cost of the single retiree premium, whichever is less, if the employee meets the following criteria:

- Retires directly from City of San Jose active service
- Has at least twenty five (25) years of retirement service credit in the Police and Fire Department Retirement Plan at the time of retirement. (Service in reciprocal retirement systems shall not count toward the minimum service requirement.)

Contribution rates made by the City and employee will be split as specified in the San Jose Municipal Code Section 3.36.575 (C).

Note: The Normal Cost portion for employees hired on or after July 1, 2010, and covered by the new benefit will be calculated separately from the Normal Cost portion of the benefit for employees covered by the benefit applicable to employees hired on or before June 30, 2010. This will result in different total City and employee contribution rates applicable to the new benefit specified above and the total contribution rates applicable to the benefit for employees hired on or before June 30, 2010. The difference in the Normal Cost for employees covered by the benefit applicable to employees hired on or after July 1, 2010, and the Normal Cost for employees hired on or before June 30, 2010, shall be determined by the Retiree Healthcare Plan actuary.

51.2 Retiree Dental Insurance

Employees hired on or after July 1, 2010, shall be ineligible to receive retiree dental insurance.

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CITY PROPOSAL #24 – SALARY STEP STRUCTURE AND MOVEMENT

~~48.3 Police Recruits shall be awarded a step increase approximately five (5%) percent upon being sworn in as a Police Officer. Their next step increases shall be due on their first, second, third, fourth, fifth and sixth anniversary dates of being appointed to the classification of Police Officer.~~

ARTICLE 58 STEP/MERIT INCREASES

Effective June 27, 2010, the salary steps for all classifications represented by the POA (excluding the classification of Police Recruit) shall change from approximately 5% between each step to approximately 2.5%. This will result in an increase in the number of steps in the pay range.

Effective June 27, 2010, all employees represented by the POA will cease to receive automatic step increases and will receive step increases based on merit only in conjunction with an annual performance appraisal submitted to Human Resources recommending a merit increase. In order to be eligible for a merit increase, employees must receive an overall performance appraisal rating of Above Standard. Increases may not be greater than 2.5% per year in the appropriate class salary range and shall not exceed the top step of a classification's salary range.

CITY PROPOSAL # 25 – FREEZING STEP/MERIT INCREASES

Effective June 27, 2010, all POA represented employees will have step/merit increases frozen for the term of the contract. At the end of the term of the contract employees represented by POA will become eligible for step increase based on merit upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible. Step increases will be based on merit only in conjunction with an annual performance appraisal submitted to Human Resources recommending a merit increase. In order to be eligible for a merit increase, employees must receive an overall performance appraisal rating of Above Standard. Increases may be no greater than one step per year in the appropriate class salary range and shall not exceed the top step of a classification's salary range.

CITY PROPOSAL #27 – CITY PAID UNION RELEASE TIME

ARTICLE 58 UNION RIGHTS

Release Time.

Employees of the San Jose Police Department are not permitted to attend employee organization/Union meetings during work hours.

Paid Release Time is permitted under the following circumstances:

- Attendance at Meet and Confer sessions between the Employee Organization and the City. The number of such employees is limited by the provisions of the Employee-Employer Resolution #39367 (City Policy Manual).
- Attendance at scheduled meetings with management, such as scheduled grievance or disciplinary meetings by a designated representative of the Employee Organization.
- Any other union related release time must receive prior approval by the Police Chief and the Office of Employee Relations, via the change of command of the individual concerned.

CITY PROPOSAL #28 – EXECUTIVE LEAVE IN LIEU OF OVERTIME FOR CAPTAINS

13.6.9 Deputy Chief Executive Leave

The classification of Deputy Chief is excluded from receiving paid overtime or accruing compensatory time off for hours worked in excess of eight (8) hours per day or forty (40) hours per week. In lieu of receiving paid overtime and compensatory time off, Deputy Chiefs are entitled to forty (40) hours of Executive Leave per calendar year. Executive Leave is not an accrued benefit, and may not be carried over to future calendar years. (Note: the calendar year begins the first day of pay period 1 and ends the last day of pay period 26.)

13.6.9.1 The Chief of Police may recommend to the City Manager or his/her designee additional hours of Executive Leave for Deputy Chiefs per the provisions of the Management Performance Program (City Policy Manual, Section 3.3.2).

13.6.10 Captain Executive Leave

Effective June 27, 2010, the classification of Captain shall be excluded from receiving paid overtime or accruing compensatory time off for hours worked in excess of eight (8) hours per day or forty (40) hours per week. In lieu of receiving paid overtime and compensatory time off, Captains shall be entitled to forty (40) hours of Executive Leave per calendar year. Executive Leave is not an accrued benefit, and may not be carried over to future calendar years. (Note: the calendar year begins the first day of pay period 1 and ends the last day of pay period 26.)

13.6.10.1 The Chief of Police may recommend to the City Manager or his/her designee additional hours of Executive Leave for Captains per the provisions of the Management Performance Program (City Policy Manual, Section 3.3.2).

CITY PROPOSAL #29 – RATE OF PAY FOR SEPERATION PAYOUTS

7.1.7 POST pay shall not be included in the base rate of pay when calculating separation payouts.

13.6.4 Except as provided in Section 13.6.5 below, overtime worked by the employee for compensatory time shall remain compensatory time to be taken, subject to provision 13.6.2 and 13.6.3 above, so long as the employee continues his/her employment in a classification represented by the Organization. Any employee whose employment is terminated by reason of resignation, discharge, or retirement, and who, at the time thereof has accrued unused compensatory time, shall be paid for such time at the base rate of pay (excluding all premium pays). ~~appropriate rate.~~ In the event of the death of an employee who has accrued unused compensatory time, the appropriate payment shall be made to the executor of the will, the administrator of the estate or other representative, as authorized by law.

30.1.5 Payment for Unused Accrued Vacation Leave Upon Termination of Employment

If the employment by the City of any full-time employee should cease, he/she shall be given, at the time of such termination, full pay for any vacation leave which he/she may then have accrued. Unused Accrued Vacation Leave shall be paid at the base rate of pay (excluding all premium pays).

31.2.3.1 If a full-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specified percent of his/her base hourly rate of pay (excluding all premium pays) at the time of retirement, termination or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death.

CITY PROPOSAL #31 – POST Premium Pay

**ARTICLE 7 ~~EDUCATION INCENTIVE AND REIMBURSEMENT~~ POST
PREMIUM PAY AND EDUCATION REIMBURSEMENT**

7.1 ~~Education Incentive~~ POST Premium Pay

7.1.1 The City agrees to pay each person who is awarded the Intermediate Certificate given by the Commission on Peace Officer Standards and Training of the State of California additional compensation equal to the difference between his/her salary and the salary that is specified in the City's biweekly Salary Schedule at his/her salary rate in the salary range that is approximately five (5%) percent higher than his/her salary range for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this Agreement from and after the first day of the biweekly pay period following the earliest of either: Effective June 27, 2010, each person who is awarded the Intermediate Certificate given by the Commission on Peace Officer Standards and Training of the State of California additional compensation equal to the difference between his/her salary and the salary that is specified in the City's biweekly Salary Schedule at his/her salary rate in the salary range that is approximately two and one-half (2.5%) percent higher than his/her salary range for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this Agreement from and after the first day of the biweekly pay period following the earliest of either:

- a) He/she files with the Finance Department that he/she has been awarded the Intermediate Certificate from the Commission on Peace Officer Standards and Training, or
- b) Sixty (60) days after the Police Department certifies and informs the Finance Department that the person has completed all of the requirements for the Intermediate Certificate and the application for the Intermediate certificate has been filed with the Commission on Peace Officer Standards and Training.

- 1. Proof of Intermediate Certificate must be submitted to the Finance Department as soon as it has been received.
- 2. If within (180) days of the Police Department certifying and informing the Finance Department that the person

has completed all of the requirement for the Intermediate Certificate and the application has been filed with the Commission on Peace Officer Standards and Training proof is not filed with the Finance Department that said Intermediate certificate has been awarded or if it is determined by the Commission on Peace Officer Standards and Training that the person is ineligible for the Intermediate Certification, any compensation provided pursuant to this agreement shall be terminated and he/she will be required to repay to the City all compensation awarded pursuant to this agreement and any future compensation required by this agreement will start from and after the first day of the biweekly pay period following the filing of proof with the Finance Department that he/she has been awarded said Intermediate Certificate. Once a determination is made that a repayment is due to the City, the full amount shall be due and payable to the City. Should an employee not make immediate payment in full any amounts due and payable will be deducted pursuant to Section 11.3.

7.1.2 The City agrees to pay each person who is awarded the Advanced Certificate additional compensation equal to the difference between his/her salary and the salary that is specified in the City's biweekly Salary Schedule at his/her salary range that is approximately seven and one-half (7 1/2%) percent higher than his/her salary range for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this Agreement from and after the first day of the biweekly pay period following the earliest of either: Effective June 27, 2010, the City agrees to pay each person who is awarded the Advanced Certificate additional compensation equal to the difference between his/her salary and the salary that is specified in the City's biweekly Salary Schedule at his/her salary range that is approximately five (5%) percent higher than his/her salary range for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this Agreement from and after the first day of the biweekly pay period following the earliest of either:

- a) He/she files with the Finance Department that he/she has been awarded the Advanced Certificate from the Commission on Peace Officer Standards and Training, or
- b) Sixty (60) days after the Police Department certifies and informs the Finance Department that the person has completed all of the requirements for the Advanced Certificate and the application for

the Advanced certificate has been filed with the Commission on Peace Officer Standards and Training.

1. Proof of Advanced Certificate must be submitted to the Finance Department as soon as it has been received.
 2. If within 180 days of the Police Department certifying and informing the Finance Department that the person has completed all of the requirement for the Advanced Certificate and the application has been filed with the Commission on Peace Officer Standards and Training proof is not filed with the Finance Department that said Advanced certificate has been awarded or if it is determined by the Commission on Peace Officer Standards and Training that the person is ineligible for the Advanced Certification, any compensation provided pursuant to this agreement shall be terminated and he/she will be required to repay to the City all compensation awarded pursuant to this agreement and any future compensation required by this agreement will start from and after the first day of the biweekly pay period following the filing of proof with the Finance Department that he/she has been awarded said Advanced Certificate. Once a determination is made that a repayment is due to the City, the full amount shall be due and payable to the City. Should an employee not make immediate payment in full any amounts due and payable will be deducted pursuant to Section 11.3.
- 7.1.3 Each person who, as of July 1, 1969, had been continuously employed as a San Jose Police Officer for a period of ten (10) years or more, who was awarded the Basic Certificate given by the Commission on Peace Officer Standards and Training of the State of California on or before February 15, 1970, and who, on or before March 1, 1970, filed with the Director of Finance proof that he/she had been awarded said Basic Certificate on or before February 15, 1970, shall be entitled to the compensation provided in Section 7.1.1.
- 7.1.4 Each person who as of July 1, 1969, had been continuously employed as a San Jose Police Officer for a period of fifteen (15) years or more, who was awarded the Basic Certificate given by the Commission on Peace Officer Standards and Training of the State of California on or before February 15, 1970, and who, on or before March 1, 1970, filed with the Director of Finance proof that he/she had been awarded said Basic Certificate on or before February 15, 1970, shall be entitled to the compensation provided in Section 7.1.2.

7.1.5 A person holding a position in the classification of Police Artist (2244) is entitled to benefits under this Article only if such person is a sworn Police Officer.

7.1.6 Notwithstanding anything to the contrary contained in this Article, no person shall be entitled to receive additional compensation under the provisions of more than one section of this Article, provided, however, that in the event that any person would otherwise be entitled to such additional compensation as is specified in two or more Sections, he/she shall be paid such additional compensation at the highest rate to which he/she is entitled, and no more.

7.2 Education Reimbursement

The Tuition Assistance policy as provided in (Section 4.3.1) of the City Policy Manual of the City of San Jose shall be continued during the term of this Memorandum of Understanding. In no event shall tuition received from this program plus reimbursement from other educational incentive programs exceed the total cost of tuition and books.

CITY PROPOSAL #32 – HOUSEKEEPING

ARTICLE 30 VACATIONS

30.1 Each eligible full-time employee shall be granted vacation leave with pay in accordance with the following:

30.1.1 Vacation Accrual. Each employee shall accrue a leave of absence with full pay for vacation purposes, in the amount specified below for each cycle of twenty-six (26) full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of his/her employment as specified below:

<u>Years of Service</u>	<u>Hours of Vacation per 26 Pay Period Cycle</u>
1st 5 years	80 hours
6th year - 10th year	120 hours
11th year - 12th year	140 hours
13th year - 14th year	160 hours
15th year or more	180 hours

30.1.2 ~~Carry-Over of Vacation Leave~~

~~An employee may carry over to the next subsequent cycle of twenty-six (26) biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which he/she is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. This carryover process shall expire at the end of the 2009 payroll calendar year.~~

~~Effective the first payperiod of payroll calendar year 2010, Employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount.~~

~~Effective the first payperiod of payroll calendar year 2010, aAny employee who is already above two times their annual vacation accrual rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.~~

30.1.3 ~~Effective the first payperiod of payroll calendar year 2010, e~~Employees will only be allowed to use vacation that has already been accrued.

30.1.4 Reimbursement for Unearned Vacation Leave

If the employment of any full-time employee should cease, and if he/she should have taken more vacation leave than he/she had accrued at the time of termination of his/her employment, there shall be deducted from his/her final pay, or he/she shall refund to the City, such pay as he/she shall have received

for vacation leave theretofore taken by him/her. The provisions of this Subsection 30.1.3 shall not apply to any full-time employee whose employment by the City is terminated by reason of the employee's death or entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one year in duration.

30.1.5 Payment for Unused Accrued Vacation Leave Upon Termination of Employment

If the employment by the City of any full-time employee should cease, he/she shall be given, at the time of such termination, full pay for any vacation leave which he/she may then have accrued.

30.2 Vacation Leave

Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such Department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless he/she elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the relative length of time served by each employee in the classification in which he/she is employed in a Department of the City government, and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employees in such classification.

30.3 Computation of Vacation Leave

30.3.1 For purposes of this Article, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time-off, or any other paid leave, shall be deemed to be "time worked."

30.3.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period, the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation even though such employee may, upon satisfactory completion of the initial probationary period be entitled to additional vacation pursuant to the above.

30.4 Vacation/Sick Leave Conversion

30.4.1 In the event a member becomes seriously ill or seriously injured requiring hospital treatment or hospitalization while on vacation, and it can be established that the member is incapacitated due to the illness or injury, the day or days he/she is sick under these circumstances shall be carried as sick time rather than vacation and the member will for all purposes be treated as though he/she were off solely for the reason of his/her illness or injury. Upon request, the member shall submit medical documentation of the illness or injury from attending physician.